



Kentucky Journal of Equine, Agriculture, & Natural Resources Law

Volume 3 | Issue 2

Article 8

2011

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Recommended Citation

Webster, Litany (2011) "Equestrian Helmet Laws and Their Effect on Equestrian Liability," *Kentucky Journal of Equine, Agriculture, & Natural Resources Law*: Vol. 3 : Iss. 2 , Article 8.
Available at: <https://uknowledge.uky.edu/kjeanrl/vol3/iss2/8>

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EQUESTRIAN HELMET LAWS AND THEIR EFFECT ON EQUESTRIAN LIABILITY

LITANY WEBSTER *

I. INTRODUCTION

Popularity of equestrian activities is on the rise in the United States, with over thirty million people enjoying horseback riding in the country.¹ However, equestrian riding is considered to be more dangerous than skiing, automobile racing, motorcycle riding, and rugby.² While many states require headgear protection for less dangerous activities, such as motorcycling or bicycling, most states do not require the use of protective headgear for equestrian activity.³ The American Medical Association states the single most influential factor in reducing the likelihood of a head injury among equestrian riders is the voluntary use of equestrian helmets.⁴ Due to the danger involved in equestrian activities, and the ability of helmets to greatly reduce that danger, four equestrian helmet regulations have been passed. The states of New York and Florida and the cities of Norco, California and Bainbridge Island, Washington are leading the equestrian helmet law initiative.⁵

As equestrian helmet regulations receive more publicity from organizations promoting safe equestrian riding, legislators are beginning to contemplate the need for equestrian helmet regulations. However, the addition of such regulations can cause a shift in the current state of equestrian liability. With some states and municipalities requiring the use of helmets for some equestrian riders, the question is whether noncompliance with such statutes will affect the current doctrines of

* Articles Editor, KENTUCKY JOURNAL OF EQUINE, AGRICULTURE, AND NATURAL RESOURCES LAW 2011-2012. B.S. Dec. 2008 Eastern Kentucky University. J.D. expected May 2012, University of Kentucky College of Law.

¹ New York State Horse Council, *Helmet Laws*, available at <http://nyshe.org/LegalDocuments/HelmetLaws.pdf> (last visited February 21, 2011).

² Jill E. Ball et al., *Ten years of major equestrian injury: are we addressing functional outcomes?*, JOURNAL OF TRAUMA MANAGEMENT 3:2 & OUTCOMES (February 19, 2009), available at <http://www.traumamanagement.org/content/3/1/2>.

³ Helmet Laws, *supra* note 1.

⁴ *Id.*

⁵ N.Y. VEH. & TRAF. LAW §1265(1) (McKinney 2000); FLA. STAT. ANN. §773.06 (West 2010); Bainbridge Island, Washington., Municipal Code §10.30, available at http://www.mrsc.org/wa/bainbridgeisland/index_dtSearch.html (last visited February 21, 2011); Norco, California Municipal Code §9.56, available at <http://www.codepublishing.com/CA/Norco/> (last visited Feb. 21, 2011).

negligence, assumption of risk, and contributory negligence in the context of litigation for personal injury caused by equine related activities.

This Note provides an overview of the current equestrian helmet regulations and their effect on equestrian liability, as well as, discusses whether Kentucky should adopt an equestrian helmet regulation. More specifically, Section II of this Note will address the dangers associated with equestrian activities. Section III lays out the specific provisions of the equestrian helmet laws of New York, Florida, Bainbridge Island, Washington, and Norco, California, while Sections IV and V addresses how such regulations affect common law tort claims and defenses. Finally, Section VI concludes with an assessment of the present law of Kentucky, a world leader in the equine industry, in relation to this issue.

II. THE DANGERS OF EQUESTRIAN ACTIVITIES

Based on a 1990 study by the Center for Disease Control and Prevention (CDC), the rate of serious injury for horseback riders was higher than that for motorcycle riders and automobile racers when the number of injuries per number of riding hours were evaluated.⁶ An estimated 92,763 emergency room visits were made in the United States for equestrian riding injuries during 1987 and 1988.⁷ Out of these visits, the greatest numbers of injuries were sustained by twenty-five through forty-four year olds.⁸ However, injury rates for five year olds through twenty-four year olds were the highest.⁹ Interestingly, over half of the injuries occurred on privately owned farm and residential land.¹⁰

Most of the injuries were soft tissue injuries, such as lacerations, contusions, and abrasions, with fractures, dislocations, concussions, and sprains following closely behind.¹¹ The leading head injuries were soft tissue injuries, concussions, and fractures or dislocations.¹² Out of the injuries studied by the CDC, approximately ten percent involved hospitalization, but of that ten percent more than forty percent of the patients had head and neck injuries.¹³ More alarmingly, head injury was the

⁶ The Ctr for Disease Control & Prevention, *Current Trends Injuries Associated with Horseback Riding - U.S., 1987 and 1988*, MMWR Weekly (May 25, 1990), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00001626.htm>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² The Ctr for Disease Control & Prevention *supra* note 6.

¹³ *Id.*

most frequent cause of death relating to equestrian activities.¹⁴ Between 1999 and 2002, seventy-six riders under the age of twenty received fatal injuries from riding an animal or an animal drawn vehicle.¹⁵

Equestrian riding by its very nature creates a high-risk situation. The riding position is among the major causes of the serious risk associated with equestrian riding. Depending on the size of the equine, the equestrian rider's head can be elevated three meters above the ground.¹⁶ An equine can potentially kick with approximately a ton of force and run at high speeds, 65-75 kilometers per hour.¹⁷ Adding to the risk, an individual is not only subject to injury when riding an equine, but approximately twenty to thirty percent of injuries occurred while the injured individual was dismounted and participating in activities such as grooming, leading, or playing near a horse.¹⁸

III. CURRENT EQUESTRIAN HELMET LAWS

Currently, there are four equestrian helmet laws in the United States. New York adopted the first statute and became the first state in the United States to require the use of an equestrian helmet for certain equestrian riders in 2000.¹⁹ Bainbridge Island, Washington followed suit in 2001 with a city ordinance requiring the use of an equestrian helmet for any rider on public land.²⁰ By 2009, Norco, California and Florida joined the ranks among the progressive governments requiring equestrian helmets under certain circumstances.²¹

Each of the four equestrian helmet regulations vary significantly due to differing criteria for when an equestrian helmet should be worn by a rider. The most notable variations are for the age of the rider and whether the rider will be on public or private lands.²² Some of the statutes provide exclusions to the regulations and each set their own enforcement regime.²³ All of the statutes require payment of a fine upon noncompliance and state who is responsible for ensuring riders follow the regulations.²⁴

¹⁴ Marshfield Clinic, *Equestrian Safety Fact Sheet* (May 2005), available at <http://www.marshfieldclinic.org/proxy/MCRF-Centers-NFMC-nccrahs-resources-factssheets-equestrianSafetyMay2005.1.pdf>

¹⁵ *Id.*

¹⁶ Ball, *supra* note 2.

¹⁷ *Id.*

¹⁸ Marshfield, *supra* note 14

¹⁹ N.Y. VEH. & TRAF. LAW §1265(1) (McKinney 2000).

²⁰ Bainbridge Island, Washington, Municipal. Code §10.30, available at http://www.mrsc.org/wa/bainbridgeisland/index_dtSearch.html (last visited February 21, 2011)

²¹ Norco, California Municipal Code §9.56, available at <http://www.codepublishing.com/CA/Norco/> (last visited Feb. 21, 2011); FLA. STAT. ANN. §773.06 (West 2010)

²² See *Infra* Sections III, A – D.

²³ *Id.*

²⁴ *Id.*

A. New York

In 2000, New York became the first state in the United States to statutorily require the use of an equestrian helmet while riding a horse.²⁵ Any equestrian rider under the age of fourteen must wear a helmet that is “certified” by the Safety Equipment Institute for equestrian riding.²⁶ For a rider to meet the equestrian helmet requirement, the helmet must be properly affixed to the rider’s head according to the manufacturer’s fitting guidelines for the particular helmet.²⁷

Failure of a rider under fourteen years of age to wear a helmet will result in a civil fine of fifty-dollars or less.²⁸ A fine may be issued by a police officer to the rider’s parent, if the parent is at least eighteen years old and is in the presence of their child at the time of the incident.²⁹ A fine may not be issued to the rider.³⁰ In addition, the fine can be waived if proof is provided to the court that subsequent to the fine, but before the date of appearance for such violation, a helmet has been purchased or rented.³¹ The fine can also be waived if the court finds that due to economic hardship a helmet could not be purchased.³²

New York’s regulation is statutorily limited to prevent a finding of contributory negligence or assumption of risk due to the rider’s failure to comply with the equestrian helmet regulation.³³ The statute clearly states that failure to properly wear a helmet will not “bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.”³⁴

B. Florida

In October 2009, Florida became the second state to require the use of a helmet for certain equestrian riders.³⁵ Florida demands the use of

²⁵ Helmet Laws, *supra* note 1. New York’s equestrian helmet law was signed into law in 1999 but did not become effective until 2000. *Id.*

²⁶ N.Y. VEH. & TRAF. LAW §1265(1) (McKinney 2000) (stating that “‘certified’ shall mean that the helmet’s manufacturer agrees to the rules and provisions of a system that includes independent testing and quality control audits, and that each helmet manufactured by such manufacturer is permanently marked with the certifying body’s registered mark or logo before such helmet is sold or offered for sale”).

²⁷ *Id.*

²⁸ *Id.* §1265(2).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* §1265(3)(a).

³² N.Y. VEH. & TRAF. LAW §1265(3)(b) (McKinney 2000).

³³ *Id.* §1265(4).

³⁴ *Id.*

³⁵ FLA. STAT. ANN. §773.06 (West 2010).

equestrian helmets for riders under the age of sixteen if he or she is riding a horse, pony, mule, or donkey on a public road or right of way, on a public equestrian/recreational trail, in a public park, in a public preserve site, in a public school area, or on any publically owned or controlled property.³⁶ Therefore, a rider less than sixteen years old is not affected by the statute and not required to wear a helmet if riding on privately owned property.³⁷ This exclusion is still met even if the rider has to occasionally cross a public road.³⁸ Other statutory exclusions include agricultural activities or practicing and competing in shows or events that have historically not used helmets, including riding to and from such events.³⁹

For a helmet to be sufficient under Florida's statute it must meet the current standards of the American Society of Testing and Materials for protective headgear, and it must properly fit and be secured by strap to the rider's head.⁴⁰ Furthermore, Florida forbids trainers, instructors, supervisors, or any other person from renting an equine to a rider under the age of sixteen unless the rider or renter provides a helmet that meets the specified requirements.⁴¹ A parent's waiver of the use of a helmet is not valid for a person's failure to require the rider to wear a helmet.⁴² A parent, trainer, instructor, supervisor or any other adult in violation of the statute commits a noncriminal violation and is subject to a fine of five-hundred-dollars or less in accordance with F.S.A §775.083.⁴³

C. Bainbridge Island, Washington

In 2001, Bainbridge Island, a thirty-six square mile island of Washington with a population of approximately 20,000,⁴⁴ enacted legislation to require the use of helmets for any person riding a horse.⁴⁵ Most notably, the Bainbridge statute fails to limit the use of a helmet to minors, but includes all persons who ride a horse; however, the statute only includes riders on public lands.⁴⁶ Public land is defined as any public roadways, bicycle paths, park, right-of-ways, or any other publicly owned

³⁶ *Id.* §773.06(1)-(2)(c).

³⁷ *Id.* §773.06(6)(b).

³⁸ *Id.*

³⁹ *Id.* §773.06(6)(a) & (c).

⁴⁰ *Id.* §773.06(2).

⁴¹ *Id.* §773.06(3).

⁴² FLA. STAT. ANN. §773.06(4) (West 2010).

⁴³ *Id.* §773.06(5); FLA. STAT. ANN. §775.083(1)(e) (West 2010).

⁴⁴ The Kitsap Peninsula Visitor and Convention Bureau, *Bainbridge Island*, <http://www.visitkitsap.com/cities.asp?ID=1> (last visited Feb. 21, 2011).; Bainbridge Island, Washington., Municipal. Code §10.30, available at http://www.mrsc.org/wa/bainbridgeisland/index_dtSearch.html (last visited February 21, 2011).

⁴⁵ *Id.* § 10.30.30(a).

⁴⁶ *Id.*

property within the City of Bainbridge Island.⁴⁷ For a helmet to be valid under the Bainbridge municipal code it must meet or exceed the standards of the U.S. Consumer Product Safety Commission.⁴⁸ In fact, no person is allowed to sell a helmet that does not meet this standard.⁴⁹ Failure to wear a helmet may result in a civil fine not to exceed ten-dollars, however the first infraction only results in a warning.⁵⁰ The fine may be waived, reduced or suspended if the violator has not committed another similar violation in the previous year and provides proof that a helmet has been acquired.⁵¹ Parents and guardians of a minor are responsible for requiring that a proper helmet be worn while the minor is riding a horse on public land.⁵² The regulation provides one exception to its requirements: a person can be excluded from the helmet requirement, even while riding on a public area, if such person has a written note from a Washington licensed doctor stating that the use of a helmet is harmful to the health and safety of the rider.⁵³

D. Norco, California

The city of Norco, California joined the equestrian helmet initiative in 2008 by requiring certain equestrian riders under the age of eighteen years old to wear a certified helmet of a proper fit that is strapped to the rider's head.⁵⁴ In Norco, an equine is defined as a horse, pony, mule, or donkey.⁵⁵ The helmet worn by the equestrian rider must meet or exceed the American Society of Testing and Materials standards or any other nationally recognized standard for equine helmets.⁵⁶

Riders under the age of eighteen are only required to wear a helmet when riding in public areas, but when in public areas, a helmet must be worn whether or not the rider is personally controlling the equine.⁵⁷ A public area is defined as any area that is subject to the city of Norco's "original jurisdiction to regulate traffic pursuant to the State Uniform Traffic Control Laws . . .," including parks, school zones, all equestrian trails in the city, or any other publically owned or controlled land.⁵⁸

⁴⁷ *Id.* §10.30.020(D).

⁴⁸ *Id.* §10.30.020(C).

⁴⁹ *Id.* §10.30.050.

⁵⁰ *Id.* §10.30.060(A).

⁵¹ *Id.* §10.30.060(B).

⁵² *Id.* §10.30.030(C).

⁵³ Bainbridge Island, Washington., Municipal. Code §10.30, 030(D).

⁵⁴ Norco, California Municipal Code §9.56, *available at* <http://www.codepublishing.com/CA/Norco/> (last visited Feb. 21, 2011).; *Id.* §9.56.030.

⁵⁵ *Id.* § 9.56.020(C).

⁵⁶ *Id.* § 9.56.030.

⁵⁷ *Id.*

⁵⁸ *Id.* §9.56.020(B).

Parents are responsible for ensuring that their children obey the helmet regulation and are not permitted to give their children permission not to wear a helmet while riding an equine in a public area.⁵⁹ Further, no person may knowingly rent or lease an equine to a rider under the age of eighteen without verifying the rider has an appropriate helmet or providing such a helmet for the rider to wear.⁶⁰ Failure to comply with the helmet regulation may result in a citation with a fine of twenty-five dollars and required attendance of a safety seminar;⁶¹ however, upon proof that a certified helmet is purchased the court may dismiss the first violation.⁶² Further, the court may substitute community service for the fine if it is shown that the person lacks sufficient funds to pay the fine.⁶³

E. Table Summary of Current U.S. Equestrian Helmet Laws

	New York	Florida	Bainbridge Island, WA	Norco, CA
Age	Younger than 14 years old	Younger than 16 years old	Any age	Younger than 18 years old
Area	Not limited to public land	Any publicly owned or controlled land	Any publicly owned or controlled land	Any publicly owned or controlled land and areas subject to City's traffic regulation
Exclusions	N/A	Riding on privately owned land, events that historically do not involve helmets,	Riders who possesses Doctor's notes stating helmet is harmful to health and safety	N/A

⁵⁹ Norco, California Municipal Code §9.56.030

⁶⁰ *Id.*

⁶¹ *Id.* § 9.56.040.

⁶² *Id.*

⁶³ *Id.*

		and during agricultural pursuits		
Liability	Parents	Parents, trainers, instructors, supervisors or renter/leaso r	Parent/guardia n responsible for riders under 18 years old	Parents, trainers, supervisors or renter/leaso r
Penalty	Fine not to exceed \$50.00	Noncrimina l violation and a fine not to exceed \$500.00	First infraction is a warning. Second infraction is a fine not to exceed \$10.00	Fine of \$25.00 and safety seminar attendance. Possibility of community service.
Limits on Scope	Failure to comply does not constitute contributor y negligence or assumption of risk	N/A	N/A	N/A

IV. OVERVIEW OF EQUESTRIAN LIABILITY

Liability faced by equine and stable owners, trainers, and event organizers ("equine professionals") varies depending on jurisdiction.⁶⁴ Traditionally, liability was founded on common law rules that lacked uniformity and displayed varying policy based arguments.⁶⁵ However, as equestrian activities became more popular among states, liability rules were

⁶⁴ Cythia Hodges, *Quick Summary of Equine Activity Acts*, Animal Legal & Historical Ctr., (2010), available at <https://animallaw.info/topics/tabbed%20topic%20page/spusequineliability.htm>.

⁶⁵ *Id.*

codified into state statutes.⁶⁶ Currently, forty-four states have enacted some form of an equine activity liability act to limit the liability faced by equine professionals for injuries or fatalities caused by participating in equine activities.⁶⁷

These statutes undoubtedly make the understanding of equine liability more comprehensible, but have not eliminated liability for equine professionals.. For instance, an equine professional can be found liable for a rider's injuries or death if the professional intentionally disregarded the rider's safety or "failed to make a reasonable effort to ensure the [rider's] safety."⁶⁸

In general, multiple factors go into the analysis of whether the equine professional disregarded the safety of the rider. A major consideration is the propensity of the equine. If the equine professional knows that an equine has a dangerous propensity or that a rider does not have the skill level required to handle an equine with such propensities a finding of liability may be stronger.⁶⁹ While knowledge of the equine's propensities increases the likelihood of liability for the equine professional, there are also defenses that limit the liability of the equine professional, such as assumption of risk and contributory negligence. Upon a finding that a rider assumed the risk inherent to riding an equine or that the rider's own negligence contributed to the injuries suffered, the equine professionals liability is reduced or eliminated.⁷⁰

A. Negligence and Dangerous Propensity

Regardless of whether the jurisdiction has created a statute or follows the common law, liability for an equine professional is generally based on a standard of negligence.⁷¹ Not only must negligence be proven for an equine professional to be found liable for a rider's injuries, the equine professional's negligence must be shown to be the proximate cause of the rider's injuries.⁷² Furthermore, liability can be found through any

⁶⁶ *Id.* (stating that 44 states have adopted the Equine Activity Liability Act which limits liability of equine professions in the event of an injury or death related to an equine activity. However, the exact terms of this statutory framework varies according to jurisdiction).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See *E.g. B & B Livery, Inc. v. Riehl*, 960 P.2d 134, 137 (Colo. 1998); *Frank v. Mathews*, 136 S.W.3d 196, 200, 202 (Mo.App. W.D, 2004); *Pinto v. Revere-Saugus Riding Academy, Inc.*, 907 N.E.2d 259, 261 n. 9 (Mass. App. 2009).

⁷⁰ *Infra* Sect. IV. A-C.

⁷¹ *E.g.*, *Fredrickson v. Mackey*, 413 P.2d 86, 89 (Kan. 1966).

⁷² *E.g.*, *Id.*

form of negligence that is determined to be the proximate cause of the injury.⁷³

Most commonly, however, negligence is found based on the equine professional's knowledge of the equine's dangerous propensities.⁷⁴ Generally, a dangerous propensity is a propensity to act in a manner that might endanger the safety of an equine rider.⁷⁵ In determining whether the equine professional possessed knowledge of the equine's propensity, "it is sufficient if the [equine professional] has seen or heard enough to convince a man of ordinary prudence of the animal's inclination to commit an injury. . . ." ⁷⁶ Ultimately, the question that generally must be answered in an equine liability case is whether there was sufficient notice to make the equine professional aware, as a reasonably prudent person, of the likelihood of the injury.⁷⁷ It is the plaintiff's burden to prove by a preponderance of evidence that the equine has a dangerous propensity and that the defendant knew or should have known through reasonable exercise of care that the equine had dangerous propensities.⁷⁸

Equine professionals have a duty to use reasonable care in providing equines that do not have dangerous propensities to patrons of their establishments, and that duty further extends to the selection of safety equipment for the patrons.⁷⁹ An equine professional in the business of renting equines is not required or expected to insure a patron against injury, but he or she must take reasonable steps to select an equine that is suitable for the purpose of its intended use.⁸⁰ Many factors should be considered by the equine professional in determining whether the equine is suitable, such as the age, sex, and ability of the rider and the potential riding terrain.⁸¹ An equine professional satisfies his or her duty by referencing these factors against the professional's previous knowledge of the equine's habits and disposition to make a proper selection.⁸² Further, some jurisdictions suggest that the equine professional can gain the knowledge of an equine's dangerous propensity during the specific instance that caused the claimed injury.⁸³

⁷³ See *Swann v. Ashton*, 327 F.2d 105, 107-08 (10th Cir. 1964).

⁷⁴ See *Appel v. Charles Heinsohn, Inc.*, 91 A.D.2d 1029, 1030 (N.Y. App. Div. 1983).

⁷⁵ See *Id.* (citing *Dickson v. McCoy*, 39 N.Y. 400, 403 (N.Y. 1868)).

⁷⁶ *Heald v. Cox*, 480 S.W.2d 107, 111 (Mo. Ct. App. 1972).

⁷⁷ *Id.*

⁷⁸ *Swann*, 327 F.2d at 107.

⁷⁹ See *id.* at 108.

⁸⁰ *Id.* at 107.

⁸¹ See *id.*

⁸² See *id.*

⁸³ See *Pearce v. Shanks*, 266 S.E.2d 353, 354 (Ga. Ct. App. 1980) (The court did not explicitly deny that knowledge of propensity could come from the very incident that caused injury, but found that the acts of the equine, in this case, were not sufficient for such a finding.)

One Texas court in *Dee v. Parish* extended the duty of the equine professional to require equine professionals to determine the intended use and manner for which the equine will be ridden.⁸⁴ This case involved a minor who normally received lessons under supervision in an arena, but on the day of the injury rode the equine on a park trail and was thrown off during the ride.⁸⁵ The court held that if the equine professional “knew or should have known that [the rider], based on her youth and inexperience, was likely to use the horse in a manner involving unreasonable risk of bodily injury,” then the equine professional was subject to liability for that injury.⁸⁶ The court ruled in favor of the minor, although the horse selected on the day of the injury would have been suitable if the minor had stayed in the arena under the supervision of professionals.⁸⁷

While jurisdictions vary as to what constitutes negligence for an equine professional to be found liable for personal injury claims of equine riders, many require a showing that the equine professional breached his or her duty of care by not considering the dangerous propensity of the equine in question or intentionally increasing the risk of harm to the rider by failing to exercise reasonable care.

B. Assumption of risk

A strong defense against a liability claim for an equine professional is the assumption of risk doctrine. Courts have subjected the law of assumption of risk to multiple interpretations.⁸⁸ In one form, assumption of risk involves the plaintiff voluntarily entering into some relation with the defendant in which he or she knows risk is involved.⁸⁹ A person’s assumption of risk can be proven by an express acknowledgment of the risk or can be implied due to the inherent nature of the act in which the plaintiff engaged.⁹⁰ When found, assumption of risk can bar a claim for negligence.⁹¹

For a plaintiff to assume the risk he or she must know of the existence of the risk; for a majority of dangerous activities it is simply a

⁸⁴ See *Dee v. Parish*, 327 S.W.2d 449, 452 (Tex. 1959).

⁸⁵ *Id.* at 451.

⁸⁶ *Id.* at 452.

⁸⁷ *Id.*

⁸⁸ See *Smith v. Seven Spring Farms, Inc.*, 716 F.2d 1002, 1005 (3d Cir. 1983) (explaining three disparate meanings that are given to the term of “assumption of risk.” First, it may mean that the plaintiff has expressly excused the defendant of an obligation to exercise ordinary care. Second, it may mean that the plaintiff has voluntarily entered into a relationship whereby each understands the risks involved. Third, the plaintiff is aware of the risk of the defendant’s negligence and voluntarily encounters that risk.).

⁸⁹ *Id.*

⁹⁰ See *id.*

⁹¹ RESTATEMENT (SECOND) OF TORTS § 523 (1977).

matter of common knowledge that the risk exists and the activity is inseparable from the risk.⁹² Accordingly, unless the plaintiff has been misled or is too young to fully appreciate the risk, knowledge will be found even if the plaintiff denies knowledge of the abnormally dangerous risks associated with the activity.⁹³ A sufficient finding of assumption of risk occurs when the plaintiff knows that there is an abnormal risk of harm in the activity, even if he or she does not know all of the causes or elements of the risk.⁹⁴ In assuming the risk, the plaintiff's actions can be reasonable or unreasonable.⁹⁵

In *Levinson v. Owens*, the Third District Court of Appeals of California concluded that horseback riding was an inherently dangerous activity and all participants acknowledged the activity involved the risk of being thrown off the horse or other related injuries.⁹⁶ Elaborating, the court suggested that a "rider generally assumes the risk of injury inherent in the sport. Another person does not owe a duty to protect the rider from injury by discouraging the rider's vigorous participation in the sport or by requiring that an integral part of horseback riding be abandoned."⁹⁷ Such a person only owes a duty to "not 'intentionally' injure the rider" and not to "'increase the risk of harm beyond what is inherent in [horseback riding.]'"⁹⁸ In *Levinson*, the court concluded that since the injured plaintiff stated she had ridden a horse before and due to the lack of evidence to show that the horse in question held any unsuitable propensities, the plaintiff assumed the risk inherent in riding the horse, and therefore judgment was given for the defendants.⁹⁹

Some courts have found that assumption of risk is heightened based on the experience level of the rider. In *Hargrave v. Wellman*, the Ninth Circuit Court of Appeals held that where a rider is "not entirely inexperienced" he should not be surprised by the risks involved in horseback riding.¹⁰⁰ The court determined that based on the plaintiff's previous experience with horseback riding he knew horses tend to break into a full run.¹⁰¹ He was put on further notice of this fact when he witnessed his horse break into a slow trot to catch up with the other horses.¹⁰² Ultimately, the court ruled against liability stating that equine professionals are bound to ordinary care and diligence in providing a

⁹² RESTATEMENT (SECOND) OF TORTS § 523 cmt. c (1977).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Stephenson v. Coll. Misericordia*, 376 F. Supp. 1324, 1327 (M.D. Pa. 1974).

⁹⁶ *Levinson v. Owens*, 98 Cal. Rptr. 3d 779, 788 (Cal. Ct. App. 2009).

⁹⁷ *Id.*

⁹⁸ *Id.* (citing *Kahn v. Eastside Union High School Dist.*, 75 P.3d 30 (Cal. 2003)).

⁹⁹ *Id.* at 793.

¹⁰⁰ *See Hargrave v. Wellman*, 276 F.2d 948, 951 (9th Cir. 1960).

¹⁰¹ *Id.* at 951.

¹⁰² *Id.*

suitable horse and based on the lack of evidence of any dangerous propensity of the equine and the plaintiff's knowledge of horseback riding, the plaintiff assumed the risk of his injury.¹⁰³

This approach is adopted by multiple jurisdictions with the precedent leaning toward a stronger finding of assumption of risk based on the experience level of the rider.¹⁰⁴ This fact is usually due to the belief that an experience rider has more than sufficient knowledge of the general propensities of equines.¹⁰⁵

C. Contributory Negligence

Showing a plaintiff is contributorily negligent is confusingly similar to the defense of assumption of risk. According to the Second Restatement of Torts, a plaintiff is contributorily negligent if he or she knowingly and unreasonably subjects him or herself to the risk of harm caused by an activity.¹⁰⁶ Contributory negligence uses the normal standard of negligence denoting what a reasonably prudent person would have done in the same or similar circumstances.¹⁰⁷

Some jurisdictions draw the line between contributory negligence and assumption of risk based on the reasonableness or knowledge of the plaintiff's actions.¹⁰⁸ Contributory negligence is found when the plaintiff fails to exercise due care for his safety.¹⁰⁹ If the plaintiff acts unreasonably, in a manner in which the advantages do not outweigh the risk, then the plaintiff's own negligence is the cause of the injury.¹¹⁰ While assumption of risk tends to be found where knowledge of the danger exists, contributory negligence involves a "departure from the standard of conduct of the reasonable man, however unaware, unwilling . . . the plaintiff may be."¹¹¹ The main hallmark of contributory negligence is that the plaintiff exposes himself to risk while being subjectively unaware even though a reasonable person exercising due care would have recognized the risk.¹¹²

The two defenses are not mutually exclusive and are often both brought while defending a liability claim. A finding of contributory negligence is a complete bar of liability at common law; however, many jurisdictions have adopted the doctrine of comparative negligence which reduces the plaintiff's awards based on the plaintiff's own percentage of

¹⁰³ *See id.*

¹⁰⁴ *E.g. see id.*; *See also* Baar v. Holder, 482 P.2d 386, 388 (Colo. App. 1971).

¹⁰⁵ *See Baar*, 482 P.2d 386, 388 (Colo. App. 1971).

¹⁰⁶ RESTATEMENT (SECOND) OF TORTS § 524(2) (1977).

¹⁰⁷ *Smith*, 716 F.2d at 1006.

¹⁰⁸ *See id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

negligence in causing the claimed injury, but the Plaintiff would still be able to proceed with the action and recover damages for the percentage of defendant's negligence in causing the claimed injury.¹¹³

V. EQUESTRIAN HELMET LAWS EFFECT ON EQUESTRIAN LIABILITY

New York is the only state or municipality to account for the effects equestrian helmet regulations may have on liability litigation. New York's equestrian helmet statute effectively states that failure of a rider to comply with the equestrian helmet regulation will not constitute assumption of risk or contributory negligence, and further, such failure will not "bar, preclude, or foreclose" an action for personal injury or wrongful death.¹¹⁴ In limiting the scope of the equestrian helmet laws concerning future liability litigation, New York's statute explicitly limits the overall risk of noncompliance to a fifty-dollar fine.¹¹⁵ The remaining three equestrian helmet statutes found in Florida; Norco, California; and Bainbridge Island, Washington leave the effect of noncompliance on the doctrines of negligence, assumption of risk, contributory negligence, and overall damages up to judicial interpretation.¹¹⁶

However, the initial finding of negligence on the part of the equine professional is unlikely to change based on equestrian helmet laws alone. A finding that an equine has a dangerous propensity or is unsuitable for the specific rider due to his or her experience level will not be affected by whether the equine professional required the use of an equestrian helmet. While other forms of negligence can lead to liability for the equine professional, it is unlikely that failure to provide or ensure a helmet is worn will be enough to establish negligence without more.

A potential outcome, however, for the failure to specify how noncompliance effects liability is that where an equestrian helmet regulation exist, evidence of negligence may be found stronger due to the equestrian professional's failure to enforce the regulations. Part of the equine professional's duty is to take reasonable care in selecting the equine and safety devices to avoid unreasonable harm to the rider.¹¹⁷ In *Snyder v. Kramer*, the Court of Appeals of New York considered such an argument

¹¹³ See RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY § 7 (2000); see also Burton Craige, *The Road to Comparative Fault in North Carolina*, available at <http://pathlaw.com/wp-content/uploads/Road-to-Comparative-Fault.pdf> (last visited July 29, 2011).

¹¹⁴ N.Y. VEH. & TRAF. LAW *supra* note 4, §1265(4).

¹¹⁵ See *id.* §1265.

¹¹⁶ FLA. STAT. ANN. §773.06 (West 2010); Bainbridge Island, Washington, Municipal Code §10.30, available at http://www.mrsc.org/wa/bainbridgeisland/index_dtSearch.html (last visited February 21, 2011); Norco, California Municipal Code §9.56, available at <http://www.codepublishing.com/CA/Norco/> (last visited Feb. 21, 2011).

¹¹⁷ *Snyder v. Kramer*, 94 A.D.2d 860, 861(N.Y. 1983).

where an equine professional failed to supply a rider with a saddle.¹¹⁸ The court concluded that the equine professional had a duty to exercise reasonable care in making sure the equine was safe for its intended use, and this duty included supplying safety devices to avoid unreasonable risk of harm.¹¹⁹

Factoring in the use of an equestrian helmet may lead to additional considerations regarding negligence claims. For example, whether proof needs to be provided that the use of the helmet would have prevented the injury and therefore is the proximate cause of the injury or whether the rider voluntarily refused to wear a helmet and is therefore contributorily negligent or assumed the risk.

Contrary to extending the liability of the equine professional, failure to comply with equestrian helmet regulations can adversely affect the rider's claim to damages for personal injury. As previously discussed, equine activities are often considered inherently dangerous and courts may find that by participating in such an activity the participant assumes the risk. However, the equine professional still has the duty to not intentionally harm the rider and not to increase the risk of harm beyond the inherent risks of the activity.¹²⁰ With equestrian helmet regulations, the equine professional may argue that an equine rider who mounts an equine without a helmet assumed the risk of injury, especially head injuries. Under this line of reasoning, not only should the rider know of the inherent dangers of the activity that they are willingly participating in, but they have also been put on notice to such dangers as head injuries by the regulations requirement for headgear protection. Therefore, by the participant failing to comply with the statute, they are assuming the risk of the activity and, more specifically, assuming the risk of a head injury. Upon such finding of assumption of risk, the participant will be barred from receiving damages for liability.

With regard to plaintiffs, one may rebut the assumption of risk defense by alleging the equine owner or professional breached his or her duty to not intentionally increase the risk of harm beyond what is inherent in equine riding. As previously noted, this duty is usually breached by the equine professional's failure to consider if the equine is suitable for the rider based on the equine's propensity. However, such an argument can be extended to include the equine professional's actions that intentionally increased the risk of harm to the safety of the rider by not enforcing the equestrian helmet regulation. In this scenario, the rider assumed the basic inherent risks, but did not assume any additional risks for the equine professional's failure to provide for the rider's safety. This argument places

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Levinson*, 98 Cal. Rptr.3d at 788.

a higher burden on the equine professional since they are more familiar with the equestrian world and should be knowledgeable on the regulations. This argument is further founded in the regulations themselves. Florida and Norco, California's statutes state that an equine professional can be found in violation of the regulation for failing to ensure a rider's compliance with the regulation, thereby, creating a duty on the owner or professional to ensure the safety of the riders through the use of helmets.¹²¹

A finding of contributory negligence would be more likely in a case of noncompliance with an equestrian helmet regulation. This is because contributory negligence is found when a plaintiff participates voluntarily and unreasonably in an activity that creates a risk to his or her personal safety when a reasonably prudent person would not have committed such an act.¹²² Failure to wear a helmet when the local or state law emphasizes the need for such safety equipment would likely be against the ordinarily prudent person standard. Therefore, a rider subjected to an equestrian helmet regulation who fails to comply seems more susceptible to a determination that he or she was contributorily negligent, especially in a head injury case, and that such action was the proximate or contributing cause of the injury.

A problem with extending noncompliance with the equestrian helmet regulation to a finding of assumption of risk or contributory negligence is that such findings can be a complete bar to recovery for the injuries suffered. Such a result reinforces notions of non-liability held by individuals in the equine industry. In an attempt to promote and make equestrian activities safer for participants, these statutes may also assist in barring the recovery for any damages sustained by the rider where the equine professional may have been negligent.

What seems unfair in the potential scope of the equestrian helmet regulations is the innocent victim case. A rider, unaware of the equestrian helmet regulation, will potentially be without any remedies that would have been given before the regulation was passed. Alternatively, the equine professional may have additional safeguards against frivolous liability suits where a participant is harmed at no fault of the equine professional. It does, however, seem arguable that equine professionals should not be subjected to a heightened finding of negligence when they meet their duties to the riders, yet the rider fails to follow instructions for continuous use of a helmet.

With such uncertainty as to how these regulations can affect general liability doctrines it seems that unless future and existing equestrian helmet regulations begin to specify how they can be used in liability cases

¹²¹ FLA. STAT. ANN. §773.06(3).; Norco, California Municipal Code §9.56.030.

¹²² *Stephenson*, 376 F. Supp. at 1327.

the current state of equine liability may be significantly altered in a way that will subject it to a lack of uniformity and certainty.

VI. KENTUCKY AND EQUESTRIAN HELMET REGULATION

As Kentucky is one of the most famous states for equestrian activity, hosting both the Kentucky Derby and the 2010 World Equestrian Games, speculations may arise as to whether Kentucky should join the equestrian helmet initiative. Presently, however, Kentucky has very limited helmet regulations. Yet, an equestrian helmet regulation would be in line with Kentucky's encouragement of equestrian activities and equestrian safety within the state.

A. Current Helmet Regulations in Kentucky

Currently, Kentucky has very limited helmet requirements. Kentucky does not require the use of a helmet for bicyclists, but does require the use of protective headgear under limited circumstances for motorcyclists.¹²³ According to KRS §189.287, no bicycle rider in Kentucky has to wear a helmet.¹²⁴ The only mandate for bicycle riders is that "lights, reflectors, and [an] audible warning devices" must be affixed to the bicycle.¹²⁵ As long as a bike properly has lights, reflectors, and a bell, the rider does not have to wear a helmet, even if his or her local municipality or government requires the use of helmets or other safety equipment.¹²⁶ KRS §189.287 further states that the reason behind the statute is to encourage bicycling and bicycle touring around the state, and that the only apparent safety concerns are making the presences of bicyclists known on the roads.¹²⁷

Kentucky does, however, require the use of protective headgear while riding a motorcycle under limited circumstances.¹²⁸ Under KRS §189.285, a motorcyclist is only required to wear protective headgear if he or she is riding or operating a motorcycle on a public highway and if he or she falls in one of the statutorily-specified categories.¹²⁹ First, any operator or passenger of a motorcycle under the age of twenty-one must wear protective headgear, including passengers in a sidecar attachment.¹³⁰

2006).¹²³ Ky. Rev. Stat. Ann. § 189.287 (West 2006); Ky. Rev. Stat. Ann. § 189.285(3)(a) (West 2006).

¹²⁴ Ky. Rev. Stat. Ann. § 189.287 (West 2006).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Ky. Rev. Stat. Ann. § 189.285(3)(a) (West 2006).

¹²⁹ *Id.* §189.287(3)(a)-(c).

¹³⁰ *Id.* §189.287 (3)(a).

Second, an operator who only possesses a motorcycle learner's permit must wear a helmet no matter what his or her age.¹³¹ Finally, an operator must wear protective headgear if he or she has had his or her motorcycle license for less than one year.¹³²

Based on the limited statewide helmet regulations, Louisville, Kentucky has adopted a local ordinance to require the use of a helmet. Under Louisville's regulations, all individuals on rollerblades, inline blades, skateboards, non-motorized scooters, or bicycles must wear a helmet while in the Extreme Park (an area created for skateboarding, rollerblading, etc.).¹³³ Outside the Extreme Park, individuals under the age of eighteen must wear a helmet while bicycling in park areas.¹³⁴ Further, individuals engaging in activities such as roller blading, in-line blading, skateboarding, or riding a non-motorized scooter must wear a helmet when on public roads, public right of ways, public parks, or any other public recreational area.¹³⁵ Noncompliance with Louisville's helmet regulations may result in a twenty-dollar citation.¹³⁶

B. Kentucky Should Adopt an Equestrian Helmet Regulation

Kentucky is far from a leader in helmet regulations, but Kentucky also prides itself on being a leader for the equestrian community; therefore, Kentucky Should adopt an equestrian helmet regulation to promote equestrian safety in the state. The adoption of an equestrian helmet regulation would be in line with Kentucky's current equestrian activity statutes, which were adopted due to the legislature's intent to encourage equine activities by limiting civil liability. However, these statutes do not limit the liability of equine professionals who fail to take reasonable and prudent efforts towards equine safety by failing to provide proper safety equipment or ascertain the ability levels of the riders. Accordingly, Kentucky's statutes still provide liability when equine professionals fail to meet their duty of safety; as such, an equestrian helmet regulation would only provide further detail on what the equine professional's duty entails.

While an equestrian helmet regulation seems like a logical progression for Kentucky, due to Kentucky's strong connection to equestrian activities that bring in large revenues for the state, it does not seem likely that Kentucky will adopt an equestrian helmet regulation due to its current limited employment of helmet regulations. Equestrian helmet regulations are more likely to appear as city mandates. Many cities in

¹³¹ *Id.* § (3)(b).

¹³² *Id.* § (3)(c).

¹³³ Louisville, Ky., Metro Code § 74.07(B)(1) (2004).

¹³⁴ *Id.* § 74.07(B)(3).

¹³⁵ *Id.* § 74.07(B)(2).

¹³⁶ *Id.* § 74.07(C)(2).

Kentucky strongly promote and host equestrian activities, such as Louisville which hosts the Kentucky Derby yearly and Lexington which was the forum for the 2010 World Equestrian Games (and also refers to itself as the Horse Capital of the World). Should cities push for an equestrian helmet regulation, the regulation will most likely be limited to minors and only enforceable on public land, both of which are trends displayed in Kentucky's motorcycle helmet requirements and Louisville's local helmet requirements.

VII. CONCLUSION

Equestrian Helmet regulations are being enacted due to the continued popularity of equestrian activities in the United States in an attempt to promote safety in an activity that is known to be a leading cause of sport related injuries. With the New England Journal of Medicine finding that wearing a helmet can reduce head injuries by eighty-five percent,¹³⁷ equestrian helmet regulations seem fitting, especially since most fatal equestrian injuries are head injuries.¹³⁸

Currently, New York; Florida; Bainbridge Island, Washington; and Norco, California have adopted equestrian helmet regulations in an attempt to promote safety. While each statute varies on who is regulated and where they are regulated, the underlying principle is safety for individuals participating in equestrian activities. However, these statutes leave uncertainty in the field of liability, since only New York has specified how noncompliance with the regulation will affect the doctrines of negligence, assumption of risk, and contributory negligence as it relates to equine professionals' liability for personal injury and wrongful death.

We are left to see how this uncertainty will factor into whether Kentucky will eventually adopt an equestrian helmet law. It is unlikely that Kentucky will adopt such a regulation due to its current limited employment of helmet regulation, even though it has a strong connection with equestrian activities that generate large revenues for the State. Nevertheless, Kentucky should adopt such a regulation, as it is consistent with its stance on ensuring equestrian rider's safety.

¹³⁷ Helmet Laws, *supra* note 1.

¹³⁸ Marshfield, *supra* note 13.

